

REMARKS

Claims 1 to 5, 13, 18 and 19 to 29 are pending, and have all been rejected.

Claims 26-29 have been deleted. Claim 30 has been added.

The Examiner rejected claims 1 and 3-5 because she stated that it was unclear if a method or apparatus was being claimed.

The Examiner rejected claims 1-5, 13, 18 and 19-25 pursuant to section 112, first paragraph and claims 26 - 29 pursuant to the second paragraph of section 112.

The latter rejection is now moot.

The Examiner made the following additional rejections:

<u>Claim(s)</u>	<u>Rejection</u>
1	Section 102 (b) as anticipated by Silliman, Jr. ("Silliman").
2	Section 103 in view of Silliman and Hoyt
3-5 and 25	Combination of Stanton, Silliman, Hoyt and other card games.
13	Section 103 as obvious in view of Silliman.
18	Section 103 in view of Silliman and Moody.
22-24	Section 103 Silliman, Hoyt and Moody
26-29	Section 103 in view of Moody

The Examiner stated claims 13, 18, 19-21 and 22-24 would be allowable if rewritten or amended to overcome the section 112, second paragraph, rejection.

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SECTION 112 REJECTIONSFIRST PARAGRAPH

November 28, 2003 Office action, the Examiner rejected claims 1-5, 13, 18 and 19-25 because in her view:

"The claims contain subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims are amended to include both suit and value on one side and a suit or value on the other side. This is not supported by the specification." (pages 2-3).

Applicant respectfully, but strenuously, disagrees. First, the Examiner has misunderstood the claimed invention. When the cards are dealt the suit alone is displayed. When the player selects the card and proceeds to the next step in the game, both the suit and card value are displayed. The Examiner incorrectly stated (emphasis added):

"The claims are amended to include both suit and value on one side and a suit or value on the other side."

This is incorrect.

When the card is first dealt it displays the suit only. After the card is selected, both the suit and card value are displayed. After the card is selected, it appears as an ordinary card displaying both the suit and card value. However, before it is selected by the player, it shows only the suit. Applicant has not found, nor has the Examiner discovered, any other playing card with this structure in the 400+ year history of playing cards.

That Applicant had in possession of the claimed invention is shown quite clearly in Figure 1 and the accompanying text in the specification. The caption on the

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left side of Figure 1 is: "Side One;" it shows five cards labeled 10, 20, 30, 40 and 50. Each card displays a suit: 10(spade); 20(club); 30(diamond); 40(diamond) and 50(heart). Side one of these cards does not display a card value -- just as claimed.

The accompanying text of the specification states (page 2): "The novel aspect of the game is that the player would know the suit of all five cards but would not know the value, which would be 'face down' and hidden." Therefore, there is more than ample support for the limitation: "when each card is dealt it displays the suit but not the card value[.]"

The specification explains that after these cards are dealt "[t]he player could the[n] bet, discard certain cards and get new cards to replace the cards he had discarded. The cards would then be revealed as shown in 10A, 20A, 30A, 40A and 50A." (page 2 of the specification).

The right side of Figure 1, above the caption "Side Two" shows the second side of the cards. It shows five cards labeled 10A, 20A, 30A, 40A and 50A. Card 10A displays the card value, a queen, and a suit, spades (note: the suit (spade) is the same as had been displayed in card 10); card 20A displays a card value, king, and a suit, club; card 30A displays the card value, ace, and the suit diamond; card 40A displays the card value, ten, and the suit diamonds; card 50A displays the card value, jack, and the suit heart. Therefore, the claim limitation: "when a player selects a card both the suit and card value are displayed[.]" is plainly supported in the specification.

Figure 1 above the caption "Side Two" shows the cards as described in the claims -- both the card value and the suit are displayed.

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Applicant respectfully believes he has overcome the section 112, first paragraph rejection. All claim limitations are supported in the specification.

SECOND PARAGRAPH

The Examiner stated the applicant originally claimed a "card game", but is now claiming an "electronic device." Applicant respectfully disagrees. The specification states (page 2): "Figure 1 shown [sic, shows] how this innovative card game would be played on a 'traditional' video poker machine." Applicant plainly knew and understood that the invention was to be played on an "electronic device."

Without conceding this point, Applicant has cancelled claim 26-29 to advance prosecution.

SPECIFICATION

Under the heading "Specification", the Examiner stated "[c]laims 1 & 3-5 are objected to because of the following informalities: it is unclear whether applicant is claiming apparatus or a method of play."

Claim 1 has been amended to cover physical cards (e.g., made of plastic or cardboard); it is now an apparatus claim. The subject matter of claim 1, which covered an electronic representation of playing cards has been included in new method claim 30.

The terminology now used in claim 30 is intended to prevent infringers from arguing that an electronic display of a card on a video terminal is not a "playing card." After all, the image on a video screen is a collection of electrons and phosphors. The terminology is designed to prevent an unscrupulous infringer from arguing that an image of a card on a

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video screen is not a "card"; it is an electronic representation of a card. To avoid that potential problem, Applicant has used the term "electronic representation."

Claims 3 to 5 cover a video poker game and are intended to cover the invention regardless of how an infringer uses it. This means a person who builds a video poker game that plays the claimed games would infringe the claims of the patent, as would a game constructed from plastic playing cards. The claims do not easily fall into a method or apparatus definition. The claims cover the game regardless of how it is made, used or sold.

Applicant knows of no statute or rule that requires claims to be "pigeonholed" into "method" or "apparatus." If the Examiner has support for the contention that claims must be labeled either method or apparatus claims, Applicant would appreciate being given that citation.

Because of the advancement of technology, and to guard against infringers, Applicant has phrased the claim as best he could to cover implementations of his invention that could be both a physical embodiment (e.g., a plastic card) and an electronic equivalent of a card shown on a video screen.

PRIOR ART

Claim1

The Examiner erroneously concluded: "[Silliman's] cards teach a value on one side and the suit and value on the other."

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The Examiner has misunderstood the claimed invention. The claims cover cards that when first dealt have the suit alone on one side. As explained above, this is shown in Figure 1 above the caption "Side One."

Silliman does not disclose cards that display the suit alone. Figures 1 to 6 of Silliman show the fronts and backs of his cards. However, none of those Figures shows the suit alone. If the Examiner were correct, the Figures in Silliman would show one side of the card that displayed only the suit. But Silliman does not. This alone demonstrates that Silliman did not anticipate the claimed invention. Silliman's cards do not display the suit alone, like Applicant's Figure 1. Silliman, however, has no such Figure or disclosure anywhere in his patent.

Moreover, Silliman has no relationship whatsoever to the claimed invention. Silliman is a conventional playing card that has the numbers 1 to 4 on the card backs. The numbers on the card backs do not correspond in any way to the suits of the cards shown on the other side, or to the card value. Silliman's numbers, 1, 2, 3 and 4, correspond to card hands -- not card values as Applicant has claimed. - added
use

The number on Silliman's card backs are to enable players to mark and duplicate each player's hand so that the identical hands can be easily given to other players to replay the same hands. This is necessary, for example, if four players play a card game, and four other players want the identical four hands to play in a subsequent game to match their skill against the first four players. Silliman states (col. 1 lines 45-49): "The 13 cards of each [of the four] hand[s] are then numbered on the backs from 1 to 4 respectively as in Figs. 1 and 2, so that there shall be 13 cards bearing each number 1 to 4, inclusive." All 13 cards in Silliman's hand 1 would be marked "1" on the card backs.

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All 13 cards in Silliman's hand 2 would be marked "2" on the card backs. All 13 cards in Silliman's hand 3 would be marked "3" on the cards backs; and all 13 cards in Silliman's hand 4 would be marked "4" on the card backs. Once each card hand is labeled 1, 2, 3 or 4, it is very easy to deal the identical four hands to four different players simply by looking at the card backs.

Claim 1 of Silliman explains the reason for this is to permit players to "regroup [the cards] into several hands after being played and mingled together."

Applicant's invention does not have 13 cards bearing the numbers 1 to 4.

The number 1 to 4 on the card back of Silliman's cards allow the identical four card hands to be reproduced and replayed by different players after a game is completed. This has absolutely nothing to do with Applicant's claimed invention.

Silliman does not disclose or suggest in anyway cards that display only the suit when first dealt. And, nothing in Silliman suggests that the appearance of the cards changes after the player selects the cards as claimed in Applicant's invention.

Silliman did not anticipate the claimed invention, and he does not suggest anything that could render the invention obvious.

To make this distinction even clearer, Applicant has amended the claim to read "card value" to further distinguish the invention from Silliman. As, explained above Silliman has a number 1, 2, 3 or 4 on the card back -- but this is not the card value. The card value ranges include: ace, 2, 3, 4, 5, 6, 7, 8, 9, 10, jack, queen and king. Silliman never has an ace, king, queen or jack on the card back and never has any numbers but 1, 2, 3 or 4.

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Claim 2

Because the Examiner misinterpreted the claim 1, she has also misinterpreted claim 2. This led to the erroneous conclusion that Silliman disclosed limitations of claim 2. Claim 2, like claims 1, in relevant part states: "cards have the suit on one side but not the card value and both the suit and card value on the other." As explained above, Silliman does not have cards that have the suit on one side without the card value.

Hoyt does not add anything. Hoyt does not disclose cards where the suit alone is displayed first and then both the suit and card value are displayed.

Claims 3-5 and 25

The Examiner stated:

"[Silliman] cards teach a value on one side and a suit on the other, but fail to explicitly teach his cards are dealt in the diamond shape.

Stanton discloses Improvements in and relating to Playing cards. Stanton teaches cards with indicia arranged into four suits on one side and values on the other side (page 1, lines 14-24, figures 1-4).

It would be obvious in view on Stanton to arrange the cards to add excitement to the game played by the players."

As explained above, Silliman does not disclose a card value separated from the card suit. In Silliman, both the card value and the suit are on the same side of the cards.

Stanton does not disclose cards that have the suit on one side and the card value and suit on the other side. Stanton, like Silliman, discloses a deck of cards that

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allows the same four hands of cards to be dealt repetitively without the dealer seeing the face of the cards.

Stanton's idea is to have four players begin the game with the identical hands; he explains that his cards have their backs marked so that "each player will commence on an equal basis or with an equal hand and the game will then become a game of skill instead of a game of chance as heretofore." (Page 1 line 26-28).

Stanton further explains that the backs of the cards are marked so "that they may be readily and accurately dealt or separated into hands, or sets, without the dealer seeing the face of any card." (Page 2 lines 17-19).

Stanton does not have the suits of the cards separated from the card value, as Applicant has claimed. Indeed, the Figure in Stanton shows the card backs and does not show the suit or the card value. This means without question Stanton does not disclose cards that have the suit on one side and the suit and card value on the other side. Stanton merely has a mark on an otherwise non-descriptive back that permits cards to be grouped together easily.

Therefore, even if these references were combined (there is no motivation to combine references in any case) the resulting game would not be the claimed invention.

Additionally, none of these references discloses dealing cards in a diamond shape, or exchanging cards, which further demonstrates that combining reference would not yield the claimed invention.

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Claim 13

The Examiner stated: "[Silliman's] cards teach a value on one side and suit and value on the other, but fail to explicitly teach cards with a non-descriptive back."

For the same reasons as discussed above, Silliman does not disclose cards with the suit on one side separated from the card value on the other side. It simply is not there.

Claim 18

To arrive at her conclusion that claim 18 was obvious, the Examiner combined Moody and Silliman. Silliman does not suggest any applicability to poker and Moody does not disclose a game where the player selects from more than five cards to build a five card hand. Instead Moody repeats identical five cards hands multiple times. In Moody's game, the cards are "duplicated" from one hand to another. (See col. 1, lines 22-24).

Therefore combining Moody with Silliman will not yield Applicant's invention, or anything close to this novel game.

Claims 22-24

The Examiner rejected claims 22-24 as obvious in light of the combination of Silliman, Hoyt and Moody. For reasons, explained in detail above, this combination of unrelated card games does not result in the claimed invention.

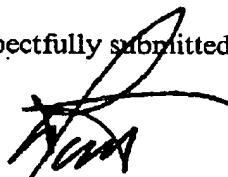
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CONCLUSION

For the foregoing reasons, Applicant believes his invention was neither anticipated nor was obvious in view of the any cited prior art. Therefore, Applicant respectfully requests reconsideration of the claims, together with a favorable determination.

Respectfully submitted,



David A. Loewenstein
Reg. No. 35, 591
802 King Street
Rye Brook, NY 10573
(914) 937-4119

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